

1 Andrew H. Wilson, SBN 063209
WILSON, RYAN & CAMPILONGO
2 115 Sansome Street
Fourth Floor
3 San Francisco, California 94104
(415) 391-3900
4 Telefax: (415) 954-0938

5 Laurie J. Bartilson, SBN 139220
MOXON & BARTILSON
6 6255 Sunset Boulevard, Suite 2000
Hollywood, CA 90028
7 (213) 960-1936
8 Telefax: (213) 953-3351

9 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

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HUB LAW OFFICES

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF MARIN

13 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California not-)
14 for-profit religious corporation,)

15)
16 Plaintiff,)

17 vs.)

18)
19)
20 GERALD ARMSTRONG; DOES 1 through)
25, inclusive,)

21)
22 Defendants.)

) CASE NO. BC 157680
)
) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) PLAINTIFF'S MOTION FOR (1)
) SUMMARY ADJUDICATION OF THE
) FIRST CAUSE OF ACTION OF
) ARMSTRONG'S FIRST AMENDED
) CROSS-COMPLAINT; (2)
) SEVERANCE; (3) DISMISSAL OF
) UNADJUDICATED CLAIMS; AND
) (4) ENTRY OF FINAL JUDGMENT

)
) DATE: December 1, 1995
) TIME: 9:00 a.m.
) DEPT: 1

) TRIAL DATE: Vacated

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1 I. PRELIMINARY STATEMENT

2 In this breach of contract action, this Court has already
3 summarily adjudicated seven of plaintiff Church of Scientology
4 International ("the Church")'s causes of action in the Church's
5 favor, including a cause of action for permanent injunction and
6 \$300,000 in liquidated damages. The defendant, Gerald Armstrong,
7 has declared bankruptcy and, while the Church is pursuing its
8 monetary relief through the bankruptcy proceedings and the
9 fraudulent conveyance portion of this action, there seems little
10 point in litigating further breaches of the agreement to
11 additional monetary judgment. Therefore, with this motion, the
12 Church seeks to resolve all of those matters presently pending
13 before this Court which can be resolved short of trial, and to
14 sever the remaining claims, concerning fraudulent conveyance
15 (which are presently stayed by order of the bankruptcy court) for
16 resolution at a later time. The Church seeks entry by this Court
17 of final judgment in plaintiff's favor, together with costs and
18 attorney's fees as provided by the Agreement. Once judgment is
19 entered, matters may then proceed to a conclusion in the
20 bankruptcy court, and a determination can be made by the
21 bankruptcy trustee concerning pursuit of the claims for
22 fraudulent conveyance.

23 As preliminary steps to the entry of final judgment in favor
24 of plaintiff, plaintiff moves that this Court:

- 25 1. Enter an order of summary adjudication in favor of
26 plaintiff/cross-defendant and against defendant/cross-
27 complainant on the First Cause of Action for Declaratory
28 Relief contained in Armstrong's First Amended Cross-

1 Complaint from the original breach of contract case. This
2 cross-claim is the only remaining claim of Armstrong's, and
3 it seeks declaratory relief as to provisions of the contract
4 which this Court has already enforced against Armstrong;

5 2. Enter an order severing the fraudulent
6 conveyance action from the breach case. The
7 adjudication of this action as to Armstrong is stayed
8 pending the bankruptcy, and the action at present
9 belongs to the trustee in bankruptcy, who has not
10 relinquished it; and

11 3. Enter an order dismissing those of plaintiff's
12 claims not already adjudicated by summary adjudication.

13 Once these matters have been resolved, all of the issues
14 remaining in this case will have been finally adjudicated in
15 plaintiff's favor. The Church requests that the Court enter
16 final judgment for the Church in the form of the Orders granting
17 summary adjudication, including permanent injunction and \$300,000
18 in damages, together with costs and fees as prayed in the Second
19 Amended Complaint. The Church also seeks a specific declaration
20 that it is the prevailing party on the contract, pursuant to
21 Civil Code Section 1717, and thus entitled to recover its
22 attorneys' fees and costs.

23 II.

24 STATEMENT OF FACTS

25 The original complaint in this action for breach of contract
26 ("the Breach case") was filed in Marin County in February, 1992.
27 Thereafter, at Armstrong's request, the case was transferred to
28 Los Angeles. A second action for fraudulent conveyance

1 (hereinafter, "the Fraudulent Conveyance case") was filed in
2 Marin County in July, 1993, after the Church learned during
3 discovery that Armstrong had transferred all of his assets,
4 including real property located in Marin County, shortly before
5 he began to repeatedly breach the settlement agreement which
6 forms the basis of the Breach case ("the Agreement").

7 In September, 1994, the Breach case was transferred back to
8 Marin County, and the two cases consolidated for trial. At the
9 time of the consolidation, the operative complaint in the Breach
10 case was the Second Amended Complaint, which contained nineteen
11 causes of action for breach of contract, and a twentieth claim
12 for injunctive relief [Request for Judicial Notice, Ex. A]. In
13 the Fraudulent Conveyance case, the operative pleading was the
14 Verified Complaint, containing three causes of action against
15 three defendants [Id., Ex. B].

16 In the Breach case, the Church was granted summary
17 adjudication of the Fourth and Sixth causes of action on January
18 27, 1995. [Id., Ex. C] Summary adjudication was also granted as
19 to the Thirteenth, Sixteenth, Seventeenth and Nineteenth Causes
20 of Action on October 17, 1995. [Id., Ex. D] In total, the Church
21 has been awarded \$300,000 in liquidated damages. In addition, on
22 October 17, 1995, the Court entered a permanent injunction
23 against Armstrong, granting summary adjudication of the Twentieth
24 Cause of Action. [Id., Ex. E]

25 In the Fraudulent Conveyance case, Armstrong filed a single
26 count cross-complaint for abuse of process. That claim was
27 summarily adjudicated in the Church's favor on September 9, 1994.
28 [Id., Ex. F]

1 In the Breach case, defendant Armstrong filed an Amended
2 Cross-complaint alleging three causes of action. [Id., Ex. G] On
3 August 16, 1994, the Los Angeles Superior Court granted the
4 Church summary adjudication of the Second cause of action (for
5 abuse of process) and of the Third cause of action (for breach of
6 contract). [Id., Ex. H]

7 During the discovery phase of these cases, Armstrong
8 admitted to dozens of individual breaches of the Agreement. In
9 ruling on the motion for summary adjudication of the twentieth
10 cause of action, this Court found that it was undisputed that
11 Armstrong had breached the Agreement more than 48 times [Id., Ex.
12 E, Order of Injunction, ¶¶ 6-8]

13 On April 18, 1995, Armstrong filed a voluntary petition for
14 bankruptcy, and proceedings in the consolidated cases were
15 automatically stayed. On May 25, 1995, the bankruptcy court
16 granted the Church's petition for relief from stay as to the
17 Breach case, but the Fraudulent Conveyance case remains stayed
18 while the bankruptcy is pending.¹ [Id., Ex. I]

19 III.

20 ARGUMENT

21 A. The Church Is Entitled To Summary Adjudication Of 22 Armstrong's Last Remaining Cross-Claim

23 When the issues presented by a cross-claim for declaratory
24 relief are fully resolved against the cross-complainant by

25 ¹ Because of the nature of the fraudulent conveyance action, in
26 which the Church claims that assets which Armstrong gave to other
27 defendants should be returned to Armstrong so that the Church may
28 execute on them, the action is now an asset of the bankruptcy
estate. The trustee in bankruptcy has not relinquished rights in
this cause of action.

1 resolution of claims contained in the complaint, it is proper for
2 the court to enter a judgment against the cross-complainant on
3 the cross-claim. International Association of Firefighters, Local
4 No. 1319, AFL-CIO v. City of Palo Alto (1963) 60 Cal.2d 295, 32
5 Cal.Rptr. 842, 845-846. Summary judgment is an appropriate
6 procedure to use to resolve a declaratory relief action. Allis-
7 Chalmers Corp. v. City of Oxnard (1981) 126 Cal.App.3d 814, 818
8 n.3, 179 Cal.Rptr. 159, 161 n.3.

9 In the Firefighters case, the firefighters brought a
10 mandamus proceeding to compel the City of Palo Alto to permit
11 them to unionize pursuant to certain Labor Code provisions. The
12 City brought a cross-complaint for declaratory relief, seeking a
13 determination that the Labor Code provisions were not valid or
14 applicable to Palo Alto. The firefighters prevailed at trial,
15 and the Court then dismissed the cross-complaint. The California
16 Supreme Court held that the trial court correctly refused the
17 requested declaratory relief, because the decision on the
18 complaint constituted "a declaration of the rights and duties of
19 [the City] as they relate to the present controversy," the
20 precise relief sought in the declaratory relief action. Id., 32
21 Cal.Rptr. at 846. However, the Supreme Court also held that,
22 rather than simply dismissing the cross-claim, the trial court
23 "'should have entered its judgment decreeing expressly (as is
24 implied by the judgment of dismissal)' that the party asking for
25 the declaration is not entitled to that remedy." Id., quoting
26 Essick v. City of Los Angeles (1950) 34 Cal.2d 614, 624, 213 P.2d
27 492, 499.

28 Here, the relief which Armstrong seeks is

1 [A] judicial determination of his rights and
2 duties, and a declaration that the only provisions of
3 the settlement agreement which are valid are those
4 which directly pertain to the dismissal of his cross-
5 complaint in Armstrong I in consideration for the
6 payment of a sum of money, and that paragraphs 4A, 4B,
7 7D, 7G, 7H, 7I, 10, 18D, 18E of the settlement
8 agreement should be severed and held not to be legally
9 enforceable because they were designed to suppress
10 evidence and obstruct justice.

11 [Ex. G to Request for Judicial Notice, Verified Amended Cross-
12 Complaint, p.29, ¶ 61]

13 This Court has already judicially determined all of these
14 issues against Armstrong. The orders of this Court granting
15 summary judgment, including the Order of Permanent Injunction,
16 are orders enforcing paragraphs 7D, 7E, 7G, 7H, 7I, 10, 18D, and
17 18E of the Agreement, and declaring the rights and obligations of
18 Armstrong pursuant to the Agreement.² [Sep.St. No. 2] Under
19 these circumstances, the Church is entitled to summary judgment
20 of Armstrong's cross-claim for declaratory relief, declaring that
21 Armstrong is not entitled to any of the relief which he
22 requested.

23 **B. In The Interests Of Justice, This Court Should Sever The
24 Fraudulent Conveyance Case From The Breach Case**

25 Code of Civil Procedure Section 1048(b) provides in part:

26 The court, in furtherance of convenience and to
27 avoid prejudice, or when separate trials will be
28 conducive to expedition and economy, may order a
separate trial of any cause of action, . . . or of any
separate issue or of any number of causes of action or
issues.

Cases are severed to promote the accuracy, fairness, and

² Paragraphs 4A and 4B of the Agreement concern an appeal which
has already become final, rendering this request moot.
[Sep.St.No. 3]

1 efficiency of adjudication. See, e.g., Foreman & Clark v. Fallon
2 (1971) 3 Cal.App.3d 875, 888, n. 8, 92 Cal.Rptr. 162, 171 n. 8.;
3 Bedolla v. Logan & Frazer (1975) 52 Cal.App.3d 118, 135, 125
4 Cal.Rptr. 59, 72. "Although there are many circumstances in
5 which severance is advisable, it is especially useful when the
6 resolution of a particular claim or issue might dispose of the
7 entire case or eliminate a party." California Civil Proc. Before
8 Trial, CEB 3d Ed. 1995, Vol. 3, § 63.2. Moreover, severance is
9 available as a remedy regardless of whether claims were brought
10 together in a prior consolidation, Id., §63.1, and "can be used
11 to minimize the delay or disruption of a multiparty action by
12 automatic stay of prosecution of claims against a bankrupt. . .
13 ." Id., §63.22.

14 Here, severance of the Fraudulent Conveyance Case is
15 desirable because it, and it alone, has been stayed by the
16 bankruptcy court. Plaintiff is unable at this time to pursue its
17 claims against Armstrong in that action and, given the nature of
18 the action, it is fruitless for plaintiff to proceed against the
19 other defendants without Armstrong's participation.

20 As described in Part C, infra, the Church is willing to
21 dismiss the those claims for breach of contract which have not
22 already been summarily adjudicated if the Breach and Fraudulent
23 Conveyance actions are severed. This means that the entire
24 Breach Case will have been resolved, without the need or expense
25 of a trial, and judgment can be entered, based on all of the
26 summary adjudication orders which have been entered thus far.
27 Severance is highly desirable if it is likely to result in
28 disposition of an action short of trial. See, e.g., Bedolla v.

1 Logan & Frazer, supra.

2 Thus, if the Fraudulent Conveyance case is severed for
3 separate determination, the delay and disruption caused by
4 Armstrong's bankruptcy filing will be minimized. The Breach
5 Case, can and should proceed to immediate final adjudication.
6 This is highly desirable not just to resolve this long-pending
7 action, but also because once liability has been finally
8 determined by this Court, the bankruptcy court can proceed with
9 its determination of whether or not Armstrong can discharge all
10 or part of that liability in bankruptcy.

11 This interim resolution will, in turn, result in a
12 determination of whether or not the Fraudulent Conveyance case
13 can even proceed to trial and, if so, whether it will be pursued
14 by the plaintiff or by the trustee in bankruptcy. The
15 uncertainties connected with this action can be resolved
16 sequentially without affecting the immediate finality of the
17 orders already entered by the Court in the Breach Case.

18 In addition, the plaintiff will have entered in its favor a
19 final judgment of permanent injunction, which can protect it from
20 future breaches. Armstrong has managed to delay entry of such a
21 judgment for more than 3 1/2 years, and his bankruptcy should not
22 be permitted to delay that resolution any further. Judicial
23 fairness and economy thus dictate that the two actions should be
24 severed at this time.

25 **C. If A Final Judgment Can Be Entered At This Time, The Church
26 Is Willing To Dismiss Those Causes Of Action In The Breach
Case Which Have Not Been Summarily Adjudicated**

27 As noted above, this Court has granted the Church summary
28 adjudication of seven causes of action in the Breach Case,

1 including \$300,000 in liquidated damages, and summary
2 adjudication of the twentieth cause of action, which incorporated
3 each of the preceding claims by reference, but sought only the
4 remedy of permanent injunction, fees and costs. Given
5 Armstrong's present claim that he is destitute, and the
6 uncertainties concerning recovery in the bankruptcy action or the
7 Fraudulent Conveyance Case, the Church would understandably
8 prefer not to undertake the expense of proceeding by summary
9 adjudication motion or trial on each remaining individual breach
10 claim at this time. Accordingly, the Church requests that these
11 claims be dismissed without prejudice,³ C.C.P. § 581(c), and that
12 final judgment be entered on the fourth, sixth, thirteenth,
13 sixteenth, seventeenth, nineteenth, and twentieth causes of
14 action in the Church's favor in accordance with the orders of
15 summary adjudication which are submitted herewith as Exhibits C,
16 D and E to the Church's Request for Judicial Notice.

17 **D. The Church Should Be Awarded Its Fees And Costs As The**
18 **Prevailing Party In This Action**

19 Paragraph 20 of the Agreement provides in relevant part:

20 In the event any party to this Agreement
21 institutes any action to preserve, to protect or to
22 enforce any right or benefit created hereunder, the
23 prevailing party in any such action shall be entitled
24 to the costs of suit and reasonable attorney's fees.

25 In general, "a plaintiff will be considered a prevailing
26 party when the lawsuit yields the primary relief sought in the
27 case." California Common Cause v. Duffy (1987) 200 Cal.App.3d

28 ³ The causes of action which have not been summarily
adjudicated, and which would be subject to the order of
dismissal, are the first, second, third, fifth, seventh, eighth,
ninth, tenth, eleventh, twelfth, fourteenth, fifteenth, and
eighteenth causes of action.

1 730, 741, 246 Cal.Rptr. 285. Moreover,

2 "[W]here claims and counterclaims arise in
3 connection with a contract containing an attorney's
4 fees provision, the party who obtains a favorable
5 judgment is deemed to be the prevailing party, even
6 though he did not successfully obtain all the relief
7 which he sought in the action."

8 Krueger v. Bank of America National Trust and Savings Association

9 (1983) 145 Cal.App.3d 204, 217, 193 Cal.Rptr. 322, 330, quoting,

10 Epstein v. Frank (1981) 125 Cal.App.3d 111, 124, 177 Cal.Rptr.

11 831.

12 There can be no doubt that plaintiff is the prevailing party
13 in this action. The Church brought the Breach Case, in 1992, to
14 enforce its rights under the Agreement, and to stop defendant
15 Armstrong from continuing to breach the Agreement in the future.
16 Armstrong defended the action by arguing that the Agreement was
17 unenforceable, and that he should be permitted by the Court to
18 freely breach the Agreement. In addition, he brought several
19 cross-claims. In separate orders, the Court dismissed all of
20 Armstrong's cross-claims,⁴ found against him on his defenses, and
21 enforced the Agreement. Armstrong has been ordered to pay the
22 Church \$300,000 in liquidated damages, and he has been
23 permanently enjoined in a manner which enforces the Agreement and
24 prohibits future breaches -- precisely the relief that plaintiff
25 requested.

26 Under these circumstances, the Church is entitled to a
27 declaration that it is the prevailing party in this action, and
28 an award of its fees and costs pursuant to paragraph 20 of the

⁴ Except for his claim for declaratory relief, concerning which plaintiff now seeks summary adjudication, see Part III. A, supra.

1 Agreement.

2 IV.

3 CONCLUSION

4 In order to proceed expeditiously to the final resolution of
5 this litigation, and in light of defendant Armstrong's petition
6 in bankruptcy, the plaintiff, Church of Scientology
7 International, requests that this Court enter final judgment in
8 its favor, by (1) granting the motion for summary adjudication of
9 Armstrong's last remaining cross-claim; (2) severing the
10 fraudulent conveyance action from the breach case; (3) dismissing
11 those of plaintiff's claims which have not yet been adjudicated;
12 and (4) entering final judgment against Armstrong pursuant to
13 plaintiff's motions for summary adjudication already granted, in
14 the amount of \$300,000 and a permanent injunction, together with
15 attorneys' fees and costs.

16 Dated: October 25, 1995

Respectfully submitted,

17
18 Andrew H. Wilson
WILSON, RYAN AND CAMPILONGO
19 MOXON & BARTILSON

20
21 By: LS
Laurie J. Bartilson

22
23 Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
24 INTERNATIONAL
25
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On October 26, 1995 I served the foregoing document described as MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR (1) SUMMARY ADJUDICATION OF THE FIRST CAUSE OF ACTION OF ARMSTRONG'S FIRST AMENDED CROSS-COMPLAINT; (2) SEVERANCE; (3) DISMISSAL OF UNADJUDICATED CLAIMS; AND (4) ENTRY OF FINAL JUDGMENT on interested parties in this action,

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] true copies thereof in sealed envelopes addressed, certified mail, as follows:

Ford Greene
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 9493

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party

served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on October 26, 1995 at Los Angeles, California.

[] **** (BY PERSONAL SERVICE)** I delivered such -- envelopes by hand to the offices of the addressees.

Executed on October 18, 1995, at San Rafael, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

 Matt Ward
Print or Type Name

 Matt Ward
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)